

In The Matter Of:
ESTATE OF THOMAS SMITH, et al. vs.
ONEIDA COUNTY, et al.

DEPOSITION OF GARY LODUHA
July 30, 2020

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UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

ESTATE OF THOMAS SMITH,
by Shannon Bryfczynski, Special Administrator,

Plaintiff,
-VS- DEPOSITION OF:
GARY A. LODUHA
CASE NO. 19-CV-972

ONEIDA COUNTY,
TOWN OF MINOCQUA,
GARY LODUHA, and STETSON GRANT,

Defendants.

Deposition examination of GARY A.
LODUHA, taken at the instance of the Plaintiff, under
and pursuant to Section 804 of the Wisconsin Statutes
and the acts amendatory thereof and supplementary
thereto, pursuant to Notice upon the parties, before
Payton J. Sorenson, a Notary Public in and for the
State of Wisconsin, at the Days Inn & Suites by
Wyndham Rhinelander, 70 North Stevens Street,
Rhineland, Wisconsin, on the 30th day of July 2020
commencing at 12:56 p.m. and ending at 1:52 p.m.

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A P P E A R A N C E S

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ALSO PRESENT: NONE

The original transcript of the
deposition of GARY A. LODUHA was filed with Attorney
Olson.

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(The originals of the above exhibits
were sealed in the original transcript; copies
thereof were included with each transcript copy, as
requested. PDF electronic files of the exhibits were
provided to counsel, as requested.)

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NONE

1 P R O C E E D I N G S 2 (Exhibits 1-7 marked for identification.) 3 GARY A. LODUHA, after having been 4 first duly sworn, was examined and testified as 5 follows: 6 THE WITNESS: I do. 7 8 EXAMINATION BY MR. OLSON: 9 Q. Please state your name. 10 A. Gary Loduha. 11 Q. Are you the Gary Loduha who is a defendant 12 in this case? 13 A. Yes. 14 Q. And where were you born? 15 A. Milwaukee, Wisconsin. 16 Q. And what year were you born? 17 A. 1987. 18 Q. What's your folks do for a living when you 19 were growing up? 20 A. My dad's been -- done construction his whole 21 life, and my mom was a teacher. 22 Q. Can you give me a history of your formal 23 education? 24 A. I graduated from high school, have an 25 associate's degree in criminal justice.	Page 5 1 Q. So got that degree in 2011? 2 A. 2013. 3 Q. 2013. 4 What did you do then? 5 A. I worked security for Thrivent Financial in 6 Appleton until I got hired by the Minocqua Police 7 Department. 8 MR. OLSON: Ms. Reporter, is this okay 9 for you? 10 (Discussion held off the record.) 11 BY MR. OLSON: 12 Q. You were hired by the Minocqua Police 13 Department when? 14 A. The summer of 2014. 15 Q. And what kind of training did you have in 16 connection with getting a police officer job with 17 Minocqua Police Department? 18 A. Just the associate's degree in criminal 19 justice as well as the basic law enforcement academy. 20 Q. And where did you attend the law enforcement 21 academy? 22 A. At Nicolet College here in Rhinelander. 23 Q. And did you have training using the 24 Wisconsin Department of Justice application called 25 Defensive and Arrest Tactics?
Page 6 1 Q. What year did you graduate from high school? 2 A. 2006. 3 Q. What did you do after that? 4 A. I went into the military. 5 Q. What branch? 6 A. Army. 7 Q. And as we said before the deposition, 101st 8 airborne; correct? 9 A. Yes. 10 Q. And what was your job? 11 A. 11 bravo light infantry. 12 Q. From when to when were you in the Army? 13 A. From 2006 to near the end of 2009. 14 Q. And what were the circumstances of leaving 15 the Army? Just the end of your enlistment? 16 A. Yep. 17 Q. What did you do after you left the Army? 18 A. I attended college. 19 Q. Which one? 20 A. Nicolet College. 21 Q. And was that where you got your associate's 22 degree? 23 A. Yes, it is. 24 Q. That was a two-year program? 25 A. Yes.	Page 6 1 A. Yes. 2 Q. That was the basic training resource for 3 that part of your training, was it not? 4 A. Yes. 5 Q. Have you had any other sorts of training 6 outside of training in the defensive and arrest 7 tactics in arrest techniques? 8 A. Besides the annual defense and arrest 9 tactics training that we do at the department, no, I 10 do not go to any specialized courses for advanced 11 tactics. 12 Q. Do you remember learning, in connection with 13 your training in defensive and arrest tactics, about 14 the distinction between active resistance and passive 15 resistance? 16 A. Yes. 17 Q. Can you put into your own words what the 18 distinction is? 19 A. Active resistance is an individual who's 20 actively resisting, and passive resistance is 21 somebody who's passively resisting. So somebody 22 saying "no" would be an example. 23 Q. I just want to read the two paragraphs from 24 page 37 of Wisconsin Defensive and Arrest Tactics. 25 You don't have that as an exhibit but --

1 MS. TIERNEY: Off the record really 2 quick. 3 (Discussion held off the record.) 4 BY MR. OLSON: 5 Q. These two paragraphs say, quote, "Passive 6 resistance refers to noncompliant but nonthreatening 7 behavior. An example would be a person who refuses 8 to get out of a car when ordered to do so. The 9 person is not fighting with you. He is -- he or she 10 is simply not complying with your orders. Protesters 11 often use passive resistance as a political tactic, 12 staging sit-ins to advance their agendas." 13 Next paragraph, "Active resistance, on 14 the other hand, refers to behaviors that physically 15 counteract an officer's attempts to control a subject 16 and who pose a risk -- and which pose a risk of harm 17 to the officer, subject, and others. Examples of 18 active resistance include attempting to pull away 19 from the officer's grasp, running away, getting up 20 after being directed to the ground, and so on." 21 Do those paragraphs correspond with 22 your understanding of the difference between active 23 and passive resistance? 24 A. Yes. 25 Q. And according to your training, is there a	Page 9	Page 11
1 difference between active and passive resistance in 2 terms of the appropriate control tactics that an 3 officer ought to employ in dealing with a suspect? 4 MS. TIERNEY: Object to the form. 5 You can go ahead and answer. 6 THE WITNESS: Oh. Yes. But it is 7 also situational at the same time too. 8 BY MR. OLSON: 9 Q. Does the Minocqua Police Department have 10 policies regarding the use of force? 11 MS. TIERNEY: Foundation. 12 Any time I object, you can still 13 answer. 14 THE WITNESS: Yes. 15 BY MR. OLSON: 16 Q. And the foundation objection, I think, is an 17 objection that suggests that you might not know the 18 answer, which seems strange to me. 19 But do those policies talk about 20 active resistance versus passive resistance? 21 A. I believe so. 22 Q. And they do that basically to convey the 23 message that, in almost all situations, less force is 24 appropriate when dealing with a passively resisting 25 suspect than when dealing with an actively resisting	Page 10	Page 12

1 A. Exhibit 4? 2 Q. Yeah. 3 A. No. That would be Riley Brooks's report. 4 Q. Well, that's the first two pages. Take a 5 look at pages 3 and 4 starting at DEF0047 at the 6 bottom. 7 A. Oh, yes. There it is. Sorry. 8 MS. TIERNEY: Off the record. 9 (Discussion held off the record.) 10 BY MR. OLSON: 11 Q. The last two pages of Exhibit 4 are your 12 report; correct? 13 A. Yes. 14 Q. And so on the first page of Exhibit 4 -- 15 well, excuse me. The first page of your report, 16 which is actually page 3 of Exhibit 4, DEF0047, you 17 say that you received a special response team call 18 for a hostage situation. 19 What's the special response team? 20 A. It's a group of law enforcement officers 21 within the county assigned to the specialized team 22 for instances such as barricaded suspects, high-risk 23 warrants, hostage situations, any call that's 24 determined to be of extremely high risk in nature. 25 Q. Now, apparently in the initial callout for	1 Q. And you wrote that, "While en route to the 2 staging area, I heard multiple updates over the radio 3 of a possible explosive device and a deceased 4 nine-year-old child." 5 Who was talking over the radio? 6 A. That was our dispatcher, I believe, Jack 7 Lilek, that was relaying information that he was 8 obtaining. 9 Q. And Jack who? 10 A. Lilek. 11 Q. How do you spell that? 12 A. I believe it's L-i-l-e-k. 13 Q. And he was a dispatcher situated where? 14 A. At the Oneida County Sheriff's Office. 15 Q. And did he tell you how he was getting this 16 information? 17 A. I was not aware at the time of how he was 18 obtaining that information. 19 Q. You did learn later that the 911 caller had 20 not spoken to the dispatcher; correct? 21 A. Yes. 22 Q. But the 911 caller had pressed buttons on 23 his phone in response to the dispatcher's requests, 24 and the dispatcher took that as conveying certain 25 information?
1 the special response team, information was conveyed 2 to you that the suspect was still in the house with a 3 gun, it was a hostage situation, and the address. 4 Who conveyed that information if you 5 know? 6 A. I do not know who conveyed that information. 7 It was just attached to the callout. 8 Usually, what happens is we receive a 9 location of either the incident or a location to 10 stage at. 11 Q. Did it come over the radio as a voice 12 communication? 13 A. No. It's sent through the Rave Alert system 14 at the sheriff's office to -- either you can have it 15 sent to your personal phone or your work phone, and 16 that's how they page individuals out. 17 Q. And it comes as a text message then? 18 A. It comes as a text message as well as a 19 phone call. 20 Q. And the phone call is from a person? 21 A. It's from an automated system. 22 Q. And based on that callout, you went to the 23 area that had been identified as the staging area at 24 Balsam Street and Maple Street? 25 A. That is correct.	Page 14 1 A. He was responding to his questions using, 2 from what I could understand, controlled presses, so 3 yes. 4 Q. And so it was through these pressing of 5 buttons on the caller's phone that the information 6 was conveyed that there was a possible explosive 7 device and a deceased nine-year-old child? 8 A. From my understanding, yes. 9 Q. And in the next paragraph you write that you 10 were "assigned to the quick reaction team as a member 11 of the arrest team and staged in the rear of the 12 BearCat." 13 Who made that assignment if you 14 recall? 15 A. That was our team commander, Detective 16 Sergeant Brian Barbour. 17 Q. And you write, "I was also informed that I 18 may deploy into a sniper position if given the 19 opportunity." That was also by Detective Sergeant 20 Barbour? 21 A. Yes. 22 Q. You write, "I was provided a short briefing 23 that there was possibly one armed suspect, one victim 24 possibly wounded, one nine-year-old possibly deceased 25 in the garage, and possible explosive devices on or

1 inside the residence." 2 All that information came from 3 Barbour? 4 MS. TIERNEY: Form. 5 THE WITNESS: I believe so. 6 BY MR. OLSON: 7 Q. And you did not know at that point, I take 8 it, that it was coming to the dispatch by button 9 pressing on a phone? 10 A. As far as I could recall, they were in 11 contact with an individual inside and believed that 12 they were trying not to speak as to give away their 13 location inside the residence. So it seemed like 14 they were hiding from the suspect. 15 Q. You write, quote, "I was then briefed on the 16 suspect description and advised on what he was 17 wearing," end quote. 18 Was that, again, briefing by Barbour? 19 A. I believe it was briefing by Barbour and 20 Captain Terri Hook. 21 Q. And what did they say the suspect was 22 wearing? 23 A. From my recollection, it was a green 24 sweatshirt and blue jeans. 25 Q. You write -- or do you know how they knew	Page 17	1 what? More like 7:30? 2 A. I'm not exactly sure of the exact time, but 3 I remember that it was becoming dark out. 4 Q. Were the lights on in the house? 5 A. I can't recall. 6 Q. You saw the man, who was later learned to be 7 Thomas A. Smith, inside his residence, looking 8 through his windows; correct? 9 A. Yes. I believe I observed him by the -- 10 what appeared to be a kitchen sink. 11 Q. And in the next paragraph you write, quote, 12 "While performing reconnaissance on the one side, I 13 observed Smith look out a window at us," period. "At 14 this point, I heard an SRT member call Smith out over 15 the loudspeaker," end quote. 16 By "call Smith out," you mean somebody 17 was using an amplification device to tell him to come 18 out of his house; correct? 19 A. Yes. 20 Q. You then write, quote, "Smith proceeded to 21 follow directions over the loudspeaker but appeared 22 to be reluctant and at times did not comply with 23 orders," end quote. 24 Are you writing about him while he's 25 in the house or while he's out of the house or both?	Page 19
1 that? Had he been seen by that point in his 2 residence -- 3 MS. TIERNEY: Foundation. 4 BY MR. OLSON: 5 Q. -- or in the residence? 6 MS. TIERNEY: Sorry. Foundation. 7 THE WITNESS: I'm not sure how they 8 came across that. 9 BY MR. OLSON: 10 Q. You write, "We proceeded to conduct various 11 reconnaissance runs of the residence to collect 12 information on the layout of the house, yard, and to 13 observe any activity." 14 What does "reconnaissance runs" mean? 15 A. We turn the lights off on the BearCat 16 because we were advised it was an armed suspect with 17 possible explosives. We didn't want to expose 18 ourselves more than we needed to. So it was trying 19 to drive up to the residence as quietly as possible 20 to see if we could observe anything. 21 Q. This was April 7 at 1853 which is, like, 22 6:53 in the evening? P.m.? 23 A. That was the time that I had received the 24 page. 25 Q. And by the time you got there, it's probably	Page 18	1 A. Both. 2 Q. You write, "Smith had a smear of an unknown 3 dark substance on the front of his shirt. At a 4 distance, this smear appeared to be blood," end 5 quote. 6 Did that observation play a role in 7 any of your subsequent decisions or actions? 8 A. No. 9 Q. You then write, "After various orders, Smith 10 was in a position to attempt an apprehension." 11 Was it your intention to arrest him? 12 A. Yes. 13 Q. What for? 14 A. I'm sorry? 15 Q. What for? 16 A. Because of the hostage situation that we 17 were advised of inside the residence. 18 Q. You thought that he was holding a hostage 19 inside the residence? 20 A. That was the information that we were 21 provided. 22 Q. And what was the basis for believing that 23 Mr. Smith was the perpetrator rather than a victim of 24 whatever mischief was going on inside the residence? 25 A. Because I was informed that Mr. Smith was	Page 20

1 identified as the suspect. 2 Q. And do you know who made that decision? 3 A. It was through information gathering that I 4 was not a part of. 5 Q. So the answer is you don't know who decided 6 that Mr. Smith was to be identified as the suspect? 7 A. Correct. 8 Q. When you saw Mr. Smith, could you tell that 9 he was frail? 10 A. No. 11 MS. TIERNEY: Form. 12 BY MR. OLSON: 13 Q. Could you tell, as you saw him move outside 14 his home, that he had difficulty walking? 15 MS. TIERNEY: Form. Assumes facts not 16 in evidence. 17 THE WITNESS: No. 18 MR. OLSON: Counsel, are you 19 suggesting that it's inappropriate for me to use 20 leading questions? 21 MS. TIERNEY: No. 22 MR. OLSON: Okay. 23 BY MR. OLSON: 24 Q. Do you remember anybody telling Mr. Smith to 25 walk backwards?	Page 21 1 possible that he was incapable of raising his hands 2 above his head? 3 A. No. 4 Q. Why didn't that occur to you? 5 A. Because it didn't appear as if he was 6 reluctant to raise his hands. It appeared -- he 7 would start to raise his hands and then put them back 8 down to his side. 9 Q. Did it occur to you that it might have been 10 impossible for reasons of physical disability for him 11 to get on the ground? 12 A. No. 13 Q. Any particular reasons why that didn't occur 14 to you? 15 A. Because he appeared to be moving. He had a 16 face that was -- appeared appropriate for his age. 17 He appeared to be about 70ish years old. 18 Q. He was moving like a reasonably fit and 19 coordinated 70-year-old person? 20 A. It appeared so, yes. 21 Q. You write that you ordered Mr. Smith to get 22 on the ground multiple times, and he did not comply 23 with those orders; is that correct? 24 A. Yes. 25 Q. And then you said that you approached Smith
Page 22 1 A. Riley Brooks was using a PA system to 2 provide commands. In regards to the exact commands 3 he gave him, I cannot recall. 4 Q. You wrote that, "Mr. Smith did not comply 5 with orders." Actually, he complied with some orders 6 and not others; correct? 7 A. He did not comply with the orders that were 8 provided to him. 9 Q. Well, he complied with the order to come out 10 of his house, didn't he? 11 A. Correct. 12 Q. And he complied with the order to come down 13 the sidewalk? 14 A. He complied to the point where he did exit 15 the residence, but to ensure that he did not have any 16 weapons or explosive devices on him, we were not able 17 to properly clear him from the BearCat. 18 Q. He did not comply with the order to get on 19 the ground? 20 A. No, he did not. 21 Q. Were there any other orders that he did not 22 comply with? 23 A. He did not comply with raising his hands or 24 showing his waistline. 25 Q. Did it occur to you that it might have been	Page 22 1 and pointed at him with your weapon, ordering him 2 multiple times to go to the ground, and he still did 3 not comply; correct? 4 A. Yes. 5 Q. And then you had a handgun in your hand 6 aimed at Mr. Smith? 7 A. No. It was my department-issued rifle. 8 Q. Okay. But aimed at Mr. Smith? 9 A. Yes. 10 Q. What kind of rifle? 11 A. It's an AR-15. 12 Q. You say you proceeded to place Smith into an 13 escort hold, ordering him to the ground, and he still 14 did not comply. What do you mean by an "escort 15 hold"? 16 A. I placed one arm -- or one hand on his upper 17 arm and the other hand around his wrist, producing 18 him into an escort hold. 19 Q. So is that done when you're standing 20 face-to-face with Mr. Smith? 21 A. Mr. Smith was bladed towards me. I could 22 not see his right side. 23 Q. So you did this with his left arm? 24 A. Yes. 25 Q. And did you think about trying to place

Page 25	Page 27
<p>1 Mr. Smith into handcuffs while he was standing up?</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. Because I did not know if he was either</p> <p>5 armed with a firearm or explosives at that point.</p> <p>6 Q. You had seen both of his hands, had you not?</p> <p>7 A. I could not determine if he was concealing</p> <p>8 anything underneath his shirt, his pants, his</p> <p>9 waistline.</p> <p>10 Q. You had, though, seen both of his hands as he had come out of the house?</p> <p>11 A. Yes. But he was bladed towards me when I</p> <p>12 approached him.</p> <p>13 MS. TIERNEY: Make sure you speak up.</p> <p>14 You're getting kind of quiet.</p> <p>15 THE WITNESS: Sorry.</p> <p>16 MS. TIERNEY: That's okay.</p> <p>17 BY MR. OLSON:</p> <p>18 Q. And you say, "Deputy Grant and I proceeded to escort Smith to the ground at a controlled rate of descent."</p> <p>19 Was he taken to the ground face-first?</p> <p>20 A. The direction that he went was towards his</p> <p>21 chest, yes.</p> <p>22 Q. And with you on his left arm and Grant on</p>	<p>1 away from me. He pulled up on me as I pulled --</p> <p>2 Q. He tried to pull his arm away from you?</p> <p>3 A. Yes.</p> <p>4 Q. Did he ever make any effort to injure you?</p> <p>5 MS. TIERNEY: Form or foundation.</p> <p>6 THE WITNESS: Not a direct threat</p> <p>7 towards myself, but the threat was that he was</p> <p>8 possibly armed with a firearm as well as the</p> <p>9 explosives that were described to me.</p> <p>10 BY MR. OLSON:</p> <p>11 Q. Other than pulling his arm away from you, did he engage in any other active resistance?</p> <p>12 A. No.</p> <p>13 Q. And he did engage in passive resistance by failing to obey the commands that were given to him by you and other officers; correct?</p> <p>14 A. Yes.</p> <p>15 Q. How many different officers were giving Mr. Smith commands?</p> <p>16 A. There was the commands that were given by</p> <p>17 the PA system, which was done by one member of the</p> <p>18 special response team. And then as I made my</p> <p>19 approach towards him, I was the only one that I could</p> <p>20 recall giving him commands to go to the ground.</p> <p>21 Q. Well, was there a time when you were giving</p>
Page 26	Page 28
<p>1 his right arm?</p> <p>2 A. I do not know the exact position of Grant</p> <p>3 because I could not see him. The only thing that I</p> <p>4 could see was Mr. Smith in front of me.</p> <p>5 Q. And was he taken down onto his sidewalk?</p> <p>6 A. I am not sure the exact platform in which he</p> <p>7 was taken down on.</p> <p>8 Q. Did he hit the ground hard enough to cause visible injuries?</p> <p>9 MS. TIERNEY: Form of the question.</p> <p>10 THE WITNESS: At the time, after he</p> <p>11 was placed under arrest, I did not see any visible</p> <p>12 injuries on him.</p> <p>13 BY MR. OLSON:</p> <p>14 Q. After he was on the ground, he was placed in handcuffs; correct?</p> <p>15 A. Yes.</p> <p>16 Q. Up to that point, had Mr. Smith engaged in any active resistance?</p> <p>17 A. Yes.</p> <p>18 Q. What would you say was the active resistance?</p> <p>19 A. When I initially had contact with Mr. Smith,</p> <p>20 I attempted to take him -- to perform a</p> <p>21 decentralization technique, at which time he pulled</p>	<p>1 him commands to go to the ground and another law enforcement officer was giving him commands to walk backwards toward the BearCat?</p> <p>2 A. Those were separate times.</p> <p>3 Q. Which happened first?</p> <p>4 A. The announcement through the PA system.</p> <p>5 Q. And that was to come out of the house; correct?</p> <p>6 A. Yes.</p> <p>7 Q. And do you remember Mr. Smith being told to turn around and walk backwards toward the BearCat?</p> <p>8 A. I cannot specifically recall that command.</p> <p>9 Q. So that might have been being given at the same time you were giving your commands to get on the ground?</p> <p>10 A. No, it was not. I was still inside the</p> <p>11 BearCat.</p> <p>12 Q. You were still inside the BearCat when what happened?</p> <p>13 A. As the directives were given through the PA</p> <p>14 system. Because we were in there for safety reasons</p> <p>15 due to the fact that there was an armed suspect with</p> <p>16 those explosives advised to us.</p> <p>17 Q. After you got out of the BearCat, is it your testimony that only you spoke to Mr. Smith?</p>

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<p>1 A. As far as I can recall, yes.</p> <p>2 Q. And were you trained that, when a group of officers are dealing with a suspect like that and need to control him or take him into custody, only one officer should do the talking?</p> <p>6 A. Yes.</p> <p>7 Q. And had there been any decision made that that officer would be you in this situation?</p> <p>9 A. I don't believe a decision was made. I believe, since I was the first one approaching him, I started giving commands, and I could not hear anybody else giving commands at that time.</p> <p>13 Q. When Mr. Smith was on the ground, did he actively resist being handcuffed?</p> <p>15 A. I knew it took Deputy Grant some time to get his right arm out from underneath him.</p> <p>17 That would be a question for Grant. I had his left arm. Grant had his right arm.</p> <p>19 Q. So when he was taken to the ground, he fell on his right arm?</p> <p>21 A. I'm not sure exactly how his right arm got underneath him. I was only controlling his left arm.</p> <p>23 That was my main focus point at that time.</p> <p>24 Q. Okay. In your report you write, "Once Smith was apprehended, Deputy Grant and I helped Smith up</p>	<p>1 Q. And his family says that he had had a stroke a couple years earlier and was unable to speak. Did you ever see any evidence that that was incorrect?</p> <p>4 A. Could you --</p> <p>5 Q. Yeah.</p> <p>6 His family says he had a stroke and was unable to speak --</p> <p>8 A. Okay.</p> <p>9 Q. -- at the time of this incident.</p> <p>10 Did you ever see any indication that that was incorrect?</p> <p>12 A. I did not see any indication that he had a stroke. I'm not a medical professional that can assess that from a distance.</p> <p>15 Q. You say, "We proceeded to place Smith in the rear of the BearCat." What's the rear of the BearCat like?</p> <p>18 A. The rear of the BearCat has two doors that open up separately. There is a huge area on the inside that's the flat floor, and then there's bench seats on each side. So he was placed in that middle section.</p> <p>23 Q. So essentially on the floor between the bench seats?</p> <p>25 A. Yes.</p>
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<p>1 and escorted him to cover behind the BearCat for his safety."</p> <p>3 So that means that, once he was handcuffed, you helped him get to his feet; correct?</p> <p>5 A. Yes. Once he was handcuffed, I did a quick pat-down search on him due to the overwhelming danger we had behind us of a possible explosive device, not knowing if there were any other suspects inside, proceeded to lift him up, and escorted him to the other side of the BearCat.</p> <p>11 Q. And you did not find any weapons or contraband on Mr. Smith; correct?</p> <p>13 A. Upon doing a secondary search, my main focus, again, was either weapons or explosive devices, and that was not located on him.</p> <p>16 Q. And you say you escorted him to cover behind the BearCat. That was in a position where you could not be shot from the house; correct?</p> <p>19 A. Either sustain incoming rounds from the house if there was another suspect inside, or if an explosive device were to go off, that would protect him from that blast.</p> <p>23 Q. Mr. Smith never said anything throughout this entire encounter; correct?</p> <p>25 A. Not that I can recall.</p>	<p>1 Q. And how did he get into the BearCat? Can you tell me what happened?</p> <p>3 A. He would not step on the platform. There's a platform that goes to the back of the BearCat. He would not step on that. So Deputy Grant and I set him up on that platform, and then he would not get into the BearCat so then he was placed on his stomach. We were able to slide him in with the assistance of other members.</p> <p>10 Q. Face-first on his stomach. So his feet were pointing towards the rear of the BearCat, and his head was toward the front of the BearCat?</p> <p>13 A. Yes. And then once he was inside the BearCat, we made sure to place him on his side.</p> <p>15 Q. And you write that you brought him back to the staging area to be assessed by medical personnel. Why was that done?</p> <p>18 A. That was a decision that was made by command staff, that anybody that was coming outside the residence to be assessed by medical personnel.</p> <p>21 Q. And you say, "Once at the staging area, I assisted Smith out of the BearCat and handed him over to paramedics." Did they put him on a gurney?</p> <p>24 A. They did.</p> <p>25 Q. Did they put him in an ambulance?</p>

<p style="text-align: right;">Page 33</p> <p>1 A. Yes, they did.</p> <p>2 Q. Did they take him to the hospital?</p> <p>3 A. Yes, they did.</p> <p>4 Q. And did they tell you what was going to happen with him?</p> <p>5 A. No. Due to the situation still inside the residence, we still had to ensure the safety of the two hostages that were inside so we proceeded to head back to the residence.</p> <p>10 Q. Was there any law enforcement participation in Mr. Smith's transportation to the hospital?</p> <p>12 A. As far as that goes, I cannot say if there was or was not because I was already back in the BearCat and on the way back to the residence.</p> <p>15 Q. As soon as he was given to the paramedics, somebody else's -- he was somebody else's responsibility?</p> <p>18 A. It was a very fast changeover. I believe there were members from Rhinelander Police Department that were there.</p> <p>21 But, like I said, as soon as he was placed into their custody, I proceeded to enter the BearCat again, and we proceeded to go back to the residence.</p> <p>25 Q. I'd like you to look at the first two pages</p>	<p style="text-align: right;">Page 35</p> <p>1 residence. However, the suspect continued rotating a full 360 degrees and was again facing the BearCat. The suspect also failed to raise his hands above his head."</p> <p>5 Let's stop there and ask you -- anything that I read so far that you disagree with?</p> <p>7 A. No. I believe the commands through the PA system were given as soon as he was seen in the bayview window of his house.</p> <p>10 Q. Brooks goes on to write, quote, "Brooks again told the suspect to turn and face his residence. The suspect began to rotate towards his residence. When the suspect was facing his residence, Brooks told him to stop. It appeared to Brooks that he was going to continue rotating a full 360 degrees again. Brooks then told the suspect to walk backwards towards the sound of his voice. The suspect began to walk backwards. When the suspect was approximately 10 to 15 feet away from the BearCat, Brooks told the suspect to stop."</p> <p>21 Do you disagree with any of that?</p> <p>22 A. From my recollection, that seems like what transpired.</p> <p>24 Q. Going on, quote, "Brooks then told the suspect to go down to his knees. The suspect</p>
<p style="text-align: right;">Page 34</p> <p>1 of Exhibit 4, which is the report of Fish & Wildlife Commission Warden Riley Brooks, and I'm going to read a part of this to you and ask you whether you disagree with any of it. It may be that some parts you can't agree or disagree with because you don't remember or because you didn't have a chance to observe. But my first question's going to be is there any parts with which you positively disagree.</p> <p>9 I'm going to start at the bottom of</p> <p>10 the first page in the second-to-last paragraph, last sentence. Quote, "The suspect then walked to the front door of the residence and opened the main door and was looking out through the screen door, standing near the threshold of the doorway."</p> <p>15 Paragraph, quote, "While the suspect was near the threshold of the doorway, Brooks used the BearCat's PA system and announced to the suspect that they were with the sheriff's department. Brooks then informed the suspect that they would like to talk to him and asked him to exit his residence. The suspect began walking down the driveway toward the BearCat. When the suspect was at approximately the middle of the driveway, Brooks told the suspect to stop, face his residence, and put his hands above his head. The suspect began to turn and face his</p>	<p style="text-align: right;">Page 36</p> <p>1 remained standing and did not go down to his knees. SRT members then exited the rear of the BearCat to handcuff the suspect. A member of the SRT near the suspect stated that the suspect did not appear to be doing well and that he may need medical attention."</p> <p>6 Stopping there, do you disagree with anything so far?</p> <p>8 A. I do not recollect ever hearing anybody saying that.</p> <p>10 Q. How many members of the SRT were near the suspect at that point?</p> <p>12 A. I do not know which point that he is talking about.</p> <p>14 Q. Well, he is talking about with Mr. Smith approximately 10 to 15 feet away from the BearCat, and "SRT members then exited the rear of the BearCat to handcuff the suspect." So Mr. Smith is 10 to 15 feet away and members of the SRT have exited the BearCat.</p> <p>20 Which members of the SRT exited the BearCat?</p> <p>22 A. I did.</p> <p>23 Q. Anybody else?</p> <p>24 A. Deputy Grant, I believe, Officer Jake Simkins.</p>

1 Q. Anybody else? 2 A. There was Officer Kurt Helke who was also 3 inside the BearCat, but he is not a member of SRT. 4 He was placed there only for additional numbers. 5 Q. So if Brooks is correct that a member of the 6 SRT near the suspect stated that the suspect did not 7 appear to be doing well and that he may need medical 8 attention, that wasn't you that said that; correct? 9 A. I do not recall ever saying anything like 10 that. 11 Q. And it might or might not have been Deputy 12 Grant? 13 A. I don't recall Grant ever saying that 14 either. 15 Q. It might or might not have been Deputy 16 Simkins? 17 A. I do not know who could have made that 18 statement. 19 Q. Going on, quote, "The suspect was then 20 loaded into the BearCat by SRT members. Brooks then 21 operated the BearCat to the command post where 22 medical personnel met them and began medical care on 23 the suspect," end quote. 24 Do you disagree with anything in that 25 last part?	Page 37 1 that you did not have a role in completing that form; 2 correct? 3 A. No, I did not. 4 Q. And take a look at Exhibit 7. This is a 5 page of handwritten provisional autopsy findings from 6 after Mr. Smith died a few days after this incident. 7 Down in the lower left-hand corner in section roman 8 numeral six, there's a section headed "blunt force 9 traumatic injuries." Do you see that section? 10 A. Yes. 11 Q. Subheading A is "scabbed abrasions to right 12 lateral face and forehead." Did anything happen to 13 Mr. Smith while you were dealing with him that could 14 have accounted for scabbed abrasions to right lateral 15 face and forehead? 16 MS. TIERNEY: Foundation. 17 THE WITNESS: That may have happened 18 during the decentralization technique. I know I had 19 his left side. And as we were escorting him to the 20 ground, he was looking at me. 21 BY MR. OLSON: 22 Q. Subheading B says, "abrasions to knees with 23 contusion to left knee." Might that have happened 24 during the decentralization? 25 MS. TIERNEY: Foundation.
Page 38 1 A. As far as medical care goes, as far as my 2 observations were -- because I did escort Mr. Smith 3 out of the BearCat and did transfer him to medical 4 personnel. The extent of the medical care he 5 received is he was placed on a gurney and placed in 6 the back of an ambulance. 7 Q. Take a look at Exhibit 5. Did you have any 8 role in filling out Exhibit 5? 9 A. No. 10 Q. I think this is a standardized sheriff's 11 department document so I don't think you would have 12 been involved in this, but I just wanted to ask. 13 MS. TIERNEY: Jeff, I think you're 14 looking at 6 because this is 5. 15 MR. OLSON: Okay. 16 MS. TIERNEY: Are you looking at this 17 one? It looks like you're looking at this one; 18 right? 19 MR. OLSON: Yeah. 20 MS. TIERNEY: That would be 6. 21 (Discussion held off the record.) 22 BY MR. OLSON: 23 Q. What we were just talking about, the 24 document headed "Addendum B - Use of Report" is 25 Exhibit 6. And my understanding of your testimony is	Page 40 1 THE WITNESS: That, I cannot say 2 because I never saw his knees. 3 BY MR. OLSON: 4 Q. So you can't rule it out, but you can't say 5 that something happened that might have caused it 6 either; correct? 7 A. I can't say that the injuries to his knees 8 was in direct contact or contact with Mr. Smith. 9 Q. It's possible that they happened during the 10 decentralization, but you didn't see it happen? 11 A. No. 12 Q. C is "abrasion to right scapular area" -- 13 that's shoulder blade -- "of back and right elbow." 14 Did anything happen to Mr. Smith while he was dealing 15 with you that would have explained those injuries? 16 MS. TIERNEY: Foundation. 17 THE WITNESS: Not that I can think of. 18 BY MR. OLSON: 19 Q. And then D is "contusion to upper posterior 20 of right arm." Did anything happen to him that might 21 have explained a contusion on the upper back of his 22 right arm? 23 MS. TIERNEY: Foundation. 24 THE WITNESS: Not that I can think of. 25 BY MR. OLSON:

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1 Q. Could that have been from the grasp of an
2 officer?

3 MS. TIERNEY: Foundation.

4 THE WITNESS: I do not know.

5 BY MR. OLSON:

6 Q. Apparently, this was a huge
7 misunderstanding. Do I understand that to be the
8 case?

9 A. I wouldn't say a "misunderstanding." The
10 information that was provided to us indicated that
11 there was a hostage situation involving two
12 individuals, one possibly deceased as well as
13 explosive devices on the residence.

14 Q. Well, do you have any reason to believe that
15 Mr. Smith was providing misinformation intentionally
16 as opposed to just being an adult, confused old man
17 pressing buttons more or less at random?

18 MS. TIERNEY: Form.

19 THE WITNESS: No.

20 BY MR. OLSON:

21 Q. Has anything been done since then, if you
22 know, to make sure that that kind of situation won't
23 occur again?

24 A. No.

25 MR. OLSON: I don't have any more

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1 questions. Thanks for coming.

2 THE WITNESS: Thank you.

3 EXAMINATION BY MS. TIERNEY:

4 Q. I just have one clarification question.

5 You were asked about arresting

6 Mr. Smith. Were you instructed by somebody to arrest
7 him or take him into custody?

8 A. I believe it was to take into custody. At
9 that time, the charges would have been homicide.

10 MS. TIERNEY: Okay. That's the only

11 question I have.

12 (Deposition concluded at 1:52 p.m.)

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1 CERTIFICATION PAGE

2 STATE OF WISCONSIN)
3 ONEIDA COUNTY)

4 I, PAYTON J. SORENSEN, Notary Public in
and for the State of Wisconsin, do hereby certify;

5 That prior to being examined, the
6 Deponent named in the foregoing deposition, GARY A.
7 LODUHA, was by me duly sworn to testify the truth,
the whole truth, and nothing but the truth. Said
8 deponent did not request the opportunity to read and
sign the transcript.

9 That said deposition was taken before
me at the time, date and place set forth; and I
10 hereby certify the foregoing is a full, true and
correct transcript of my shorthand notes so taken and
11 thereafter reduced to computerized transcription
12 under my direction and supervision.

13 I further certify that I am neither
counsel for nor related to any party to said action,
14 nor in any way interested in the outcome thereof; and
that I have no contract with the parties, attorneys,
or persons with an interest in the action that
15 affects or has a substantial tendency to affect
impartially, that requires me to relinquish control
16 of an original deposition transcript before it is
certified and delivered to the custodial attorney, or
17 that requires me to provide any service not made
available to all parties to the action.

18 IN WITNESS WHEREOF, I have hereunto
19 subscribed my name this 10th day of August 2020.

20
21 
22

23 Payton J. Sorenson

24 Notary Public - State of Wisconsin
My Commission Expires March 23, 2022

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